

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

PENNY MORGAN,	:	
	:	
Plaintiff,	:	CIVIL NO. 4-00-CV-20308
	:	
vs.	:	
	:	
FBL FINANCIAL GROUP, INC.;	:	PRELIMINARY JURY INSTRUCTIONS
	:	
Defendant.	:	

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## **INSTRUCTION NO. 1**

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. Before the trial begins, however, there are certain instructions you should have in order to better understand what will be presented before you and how you should conduct yourself during the trial. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will instruct you on the law that you must follow and apply in deciding your verdict.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration, bearing in mind that I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to his or her testimony. During the trial, however, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial.

During the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the attorneys to object when they believe evidence is not properly admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not think that due to any ruling or other comment I may make, that I have any opinions on the merits of the case favoring one

side or the other. If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

## **INSTRUCTION NO. 2**

Members of the jury: This is a civil case brought by the plaintiff, Penny Morgan, against the defendant, FBL Financial Group, Inc. Penny Morgan worked for the defendant from February 17, 1992, until March 5, 1999.

Morgan alleges that after exercising her right under the Family and Medical Leave Act to take a leave of absence from her job, Defendant retaliated against her and refused to promote her. She also alleges that Defendant discriminated against her because of her sex.

When Morgan asked to be promoted to the position of Field Claim Adjuster in March 1999, Defendant refused, explaining that there was no Field Claims Adjuster position available. Morgan then resigned. Defendant hired a man for a Field Claims Adjuster position in April 1999.

Defendant denies that it acted illegally.

This summary is given to you by the Court and is not to be considered as evidence in this case. Determine the questions submitted to you from the evidence and apply the law that I will give you.

### **INSTRUCTION NO. 3**

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

All the parties and the public expect that, regardless of the consequences, you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

#### **INSTRUCTION NO. 4**

The trial will proceed in the following order:

After I finish these preliminary instructions, the plaintiff's and the defendant's lawyers will each make an opening statement. An opening statement is not evidence, but is simply a summary of what the lawyers expect the evidence to be. The plaintiff will then present evidence, and counsel for the defendant may cross-examine. Following the plaintiff's case, the defendant may present evidence, and the plaintiff's counsel may cross-examine. Following the defendant's case, the plaintiff may take the opportunity to present additional evidence.

After the parties have presented their cases and the evidence is concluded, I will further instruct you on the law that you are to apply in reaching your verdict.

After presentation of the evidence is completed and I have further instructed you on the law, the lawyers will make closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

You will then retire to deliberate on your verdict.

## **INSTRUCTION NO. 5**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory; any motives that a witness may have for testifying a certain way; the age and manner of the witness while testifying; whether that witness said something different at an earlier time; the general reasonableness and probability or improbability of the testimony; and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the party previously said was true.

### **INSTRUCTION NO. 6**

You shall base your verdict only on the evidence and these and other instructions that I give you during the trial. Evidence is:

1. Testimony in person or testimony previously given, which includes depositions.
2. Exhibits received by the court.
3. Stipulations that are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. The following are not evidence:

1. Statements, arguments, comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.



### **INSTRUCTION NO. 7**

Plaintiff and Defendant have agreed to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts as having been proved.

## **INSTRUCTION NO. 8**

Unless otherwise instructed, in these instructions you are told that your verdict depends on whether you find certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard, which applies only in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

### **INSTRUCTION NO. 9**

During the trial of this case, certain deposition testimony may be read into evidence. A deposition is taken before trial. It consists of questions asked the witness and the witness's answers given under oath. Deposition testimony is preserved in writing. You should consider deposition testimony the same as you would testimony given in court.

During this trial, you may hear the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

**INSTRUCTION NO. 10**

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court or counsel in arriving at your own findings as to the facts.

### **INSTRUCTION NO. 11**

During this trial I will permit you to take notes. Many courts do not permit jurors to take notes, and a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory, and you should not compare your notes with the notes of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

## **INSTRUCTION NO. 12**

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit any third person to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the court as soon as you are able. You should not, however, discuss with other jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third, during the time you serve on this jury, please do not speak, in or out of the courtroom, with any of the parties or their attorneys, or any witness. By this I mean not only do not speak about the case, but do not speak at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

Dated on this \_\_\_\_\_ day of December, 2001.

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CELESTE F. BREMER  
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

PENNY MORGAN,	:	
	:	
Plaintiff,	:	CIVIL NO. 4-00-CV-20308
	:	
vs.	:	
	:	
FBL FINANCIAL GROUP, INC.,	:	FINAL JURY INSTRUCTIONS
	:	
Defendant.	:	

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## **INSTRUCTION NO. 1**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of or during the trial are not repeated here.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

## **INSTRUCTION NO. 2**

A corporation acts only through its agents or employees. Any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

### **INSTRUCTION NO. 3**

Your verdict must be for Plaintiff Penny Morgan and against Defendant on Plaintiff's claim of sex discrimination if, and only if, you find Plaintiff has proved either element 1 or 2, and has proved element 3:

1. Defendant failed to promote Plaintiff to a Field Claims position in March, 1999;

or

2. Defendant failed to hire Plaintiff for a Field Claims position in April, 1999;

and

3. Plaintiff's sex was a motivating factor in Defendant's actions.

If you find that Penny Morgan has proved either element 1 or 2, and has proved element 3, your verdict on this claim must be for her. If she has not proved either element 1 or 2, or if she has not proved element 3, then your verdict on this claim must be for Defendant.

#### **INSTRUCTION NO. 4**

Throughout these Instructions, you should interpret the word “sex” to include not only gender, but also pregnancy and related conditions.

## **INSTRUCTION NO. 5**

Your verdict must be for Plaintiff Penny Morgan and against Defendant on Plaintiff's claim of discrimination in violation of the Family and Medical Leave Act if, and only if, you find Plaintiff has proved either element 1 or 2, and has proved element 3:

1. Defendant failed to promote Plaintiff to a Field Claims position in March, 1999;

or

2. Defendant failed to hire Plaintiff for a Field Claims position in April, 1999;

and

3. Plaintiff's taking a leave of absence under the Family and Medical Leave Act was a motivating factor in Defendant's actions.

If you find that Penny Morgan has proved either element 1 or 2, and has proved element 3, your verdict on this claim must be for her. If she has not proved either element 1 or 2, or if she has not proved element 3, then your verdict on this claim must be for Defendant.

## **INSTRUCTION NO. 6**

If you do not believe Defendant's stated reasons for the decisions it made regarding Penny Morgan's or Scott Menster's employment, you may, but are not required to, infer that Defendant's true reasons for its actions included illegal discrimination.

## **INSTRUCTION NO. 7**

As used in these Instructions, Plaintiff's sex, or her exercise of her rights to take a Family and Medical Leave Act leave of absence, was a "motivating factor" if that factor played a part in the Defendant's employment actions towards Plaintiff. However, Plaintiff's sex, or her exercise of her rights to take a Family and Medical Leave Act leave of absence, need not have been the only reason or reasons for Defendant's actions.

### **INSTRUCTION NO. 8**

You have heard evidence regarding Defendant's September 5, 2001, job offer to Plaintiff. You can consider this as evidence relating to Defendant's intent when you consider Instructions 3 (sex discrimination), 5 (Family Medical Leave Act), and 10 (punitive damages). You cannot consider this job offer as evidence relating to lost past earnings as discussed in Instruction 9 (actual damages).



## INSTRUCTION NO. 9

If you find in favor of Plaintiff Penny Morgan on one or any of her claims, then you must determine an amount that is fair compensation for Plaintiff's damages. You may award compensatory damages only for injuries that Plaintiff proves were caused by Defendant's wrongful conduct. The damages you award must be fair compensation – no more, no less.

Past and Future Medical Expenses. If you find Plaintiff is entitled to damages, in determining damages you must award any past and future medical expenses that she has incurred due to the illegal conduct. Past medical expenses are the reasonable value of necessary doctor charges, counseling services, prescription medication, and other medical services from the date of harm to the present time. Future medical expenses are the present value of necessary doctor charges, counseling services, and other medical services that will be incurred in the future.

Lost Past Earnings. If you find that Plaintiff is entitled to damages, in determining those damages you must award any past earnings she has lost as a result of the illegal conduct. Lost past earnings are the amount of wages and fringe benefits Plaintiff would have earned from the date of harm to the present time, if she had not been subjected to illegal conduct.

Past and Future Emotional Distress. You must determine the amount of past and future damages for any emotional distress sustained by Penny Morgan. Award her the amount that will fairly and justly compensate her for emotional distress damages you find she sustained as a result of the illegal conduct. Damages for emotional distress include damages for emotional pain, suffering, mental anguish, humiliation, fear, apprehension, anxiety, and loss of enjoyment of life. A plaintiff does not need to introduce evidence of the monetary value of such damages. The amount you assess for these damages cannot be measured by any exact or mathematical standards. You must use your sound judgment based upon an impartial consideration of the evidence. When considering the amount of monetary damages to which a plaintiff may be entitled for emotional distress, you should consider the nature, character,

and seriousness of the emotional pain she felt. You must also consider the extent or duration, as any award you make for past emotional-distress damages must cover the damages endured by the plaintiff since the wrongdoing to the present time.

You should also award damages for the present value of future emotional distress, if Plaintiff's emotional distress and its consequences can reasonably be expected to continue in the future.

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance that, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

The amounts, if any, you find for each of the above items of damages will be used to answer the special verdicts.

## **INSTRUCTION NO. 10**

In addition to the damages mentioned in the other instructions, the law permits the jury under certain circumstances to award an injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of Plaintiff under Instruction 3 (sex discrimination), then you must decide whether Defendant acted with malice or with reckless indifference to Plaintiff's rights not to be discriminated against on the basis of her sex. Defendant acted with malice or reckless indifference if:

it has been proved by the preponderance of the evidence that Defendant's failure to promote Plaintiff was in violation of the law prohibiting sex discrimination, or Defendant acted with reckless disregard of that law.

If you find that Defendant acted with malice or reckless disregard, then in addition to any damages to which you find Plaintiff entitled, you may, but are not required to, award Plaintiff an additional amount as punitive damages if you find it is appropriate to punish Defendant or to deter Defendant and others from like conduct in the future. Whether to award punitive damages, and the amount of those damages, are within your discretion.

You may assess punitive damages against Defendant or you may refuse to impose punitive damages.

### **INSTRUCTION NO. 11**

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

## **INSTRUCTION NO. 11**

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your verdict must be unanimous. When you have agreed upon an appropriately signed verdict, you will inform the Court Security Officer outside the room.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

You are to follow all of the instructions in your deliberations. You are not to be concerned with the wisdom of any rule of law. Regardless of your opinion as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of law than that given in the instructions of the Court.

From the evidence you will decide what the facts are. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

## INSTRUCTION NO. 12

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as Presiding Juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court.

Your verdict must be based solely on the evidence and on the law that I give you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Requests regarding instructions are not encouraged. Questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court. If you need to communicate with me during your deliberations, you may send to me -- through the Court Security Officer -- a note signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone -- including me -- how your votes stand numerically.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case, or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated on this \_\_\_\_\_ day of December, 2001.

CELESTE F. BREMER  
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

PENNY MORGAN,

Plaintiff,

vs.

FBL FINANCIAL GROUP, INC.,

Defendant.

No. 4-00-CV-20308

SPECIAL VERDICT FORM

**Question No. 1:** Did Plaintiff Penny Morgan prove her claim of sex discrimination? (Please mark an “X” in the appropriate space.)

YES \_\_\_\_\_ NO \_\_\_\_\_

(If your answer to Question 1 is “yes,” then answer Questions 2 and 3. If your answer to Question 1 is “no,” then proceed to Question 4.)

**Question No. 2:** What amounts, if any, do you order Defendant to pay for Plaintiff Penny Morgan’s damages on her sex discrimination claim for each of the following items? Do not duplicate any amount, if any, you award under Question 5.



- |                              |          |
|------------------------------|----------|
| 1. Past medical expenses     | \$ _____ |
| 2. Future medical expenses   | \$ _____ |
| 3. Lost past earnings        | \$ _____ |
| 4. Past emotional distress   | \$ _____ |
| 5. Future emotional distress | \$ _____ |

(Proceed to Question 3.)

**Question No. 3:** Please indicate below the amount of punitive damages, if any, you assess on the sex discrimination claim against Defendant.

\$ \_\_\_\_\_

(Proceed to Question 4.)

**Question No. 4:** Did Plaintiff Penny Morgan prove her claim of discrimination in violation of the Family and Medical Leave Act? (Please mark an “X” in the appropriate space.)

YES \_\_\_\_\_ NO \_\_\_\_\_

(If your answer to Question 4 is “yes,” then proceed to Question 5. If your answer to Question 4 is “no,” then answer no further questions.)

**Question No. 5:** What amounts, if any, do you order Defendant to pay for Plaintiff Penny Morgan’s damages on her Family and Medical Leave Act claim for each of the following items? Do not duplicate

any amount, if any, you awarded under Question 2.

- |                              |         |
|------------------------------|---------|
| 1. Past medical expenses     | \$_____ |
| 2. Future medical expenses   | \$_____ |
| 3. Lost past earnings        | \$_____ |
| 4. Past emotional distress   | \$_____ |
| 5. Future emotional distress | \$_____ |

We reach this special verdict on the \_\_\_\_\_ day of December, 2001, at the hour of \_\_\_\_\_  
o'clock, \_\_\_\_ m.

PRESIDING JUROR